

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
DECEMBER 1995 SESSION

FILED
July 26, 1996
Cecil W. Crowson
Appellate Court Clerk

WENDELL RAY WITHERSPOON,)
)
 APPELLANT,)
) No. 01-C-01-9505-CC-00141
)
 v.) Maury County
) James L. Weatherford, Judge
)
) (Post-Conviction Relief)
 STATE OF TENNESSEE,)
)
)
 APPELLEE.)

FOR THE APPELLANT:

Wendell Ray Witherspoon, Pro Se
Prison Number 119707
CCA/SCCF P. O. Box 279
Clifton, TN 38425-0279

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter
450 James Robertson Parkway
Nashville, TN 37243-0493

Clinton J. Morgan
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

T. Michael Bottoms
District Attorney General
P.O. Box 459
Lawrenceburg, TN 38464-0459

OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

Joe B. Jones, Presiding Judge

OPINION

The appellant, Wendell Ray Witherspoon, appeals as of right from a judgment of the trial court summarily dismissing his suit for post-conviction relief. The trial court held that the suit was barred by the statute of limitations, the petition does not raise a ground for which relief may be granted, and the issue has been previously determined. In this Court, the appellant contends that the trial court erred in dismissing his suit for post-conviction relief without the benefit of an evidentiary hearing. After a thorough review of the record, the briefs of the parties, and the law controlling the issue presented for review, it is the opinion of this Court that the judgment of the trial court should be affirmed pursuant to Rule 20, Tenn. Ct. Crim. App.

This Court decided the appeal as of right on December 29, 1988 following the conviction. The Supreme Court denied the application for permission to appeal on April 3, 1989. The present suit was not initiated until July 26, 1994. The statute of limitations had expired when the present suit was filed. Furthermore, the ground raised, ineffective assistance of prior post-conviction counsel, is not a basis upon which relief can be granted.

JOE B. JONES, PRESIDING JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

JOSEPH M. TIPTON, JUDGE